

## UNITED STATES DISTRICT COURT

## EASTERN DISTRICT OF CALIFORNIA

ERIC LEE HACKETT, CASE NO. 1:11-cv-01295-LJO-GBC (PC)

Plaintiff, (USCA CASE NO. 11-16937)

v.

ORDER DENYING PLAINTIFF'S  
APPLICATION TO PROCEED IN FORMA  
PAUPERIS ON THE APPEAL FILED  
AUGUST 11, 2011CITY OF FRESNO FAX AREA EXPRESS,  
et al.,

Defendants. (ECF No. 8.)

CLERK'S OFFICE TO SERVE COPY OF  
/ ORDER ON NINTH CIRCUIT**ORDER**

Plaintiff Eric Lee Hackett is a prisoner who was proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On August 8, 2011, the Court dismissed this action, without prejudice, based on the fact that Plaintiff has filed three or more actions<sup>1</sup> which were dismissed for failure to state a claim, making him subject to Section 1915(g) and judgment was entered. (ECF Nos. 3 & 4.) Plaintiff filed a notice of appeal on August 11, 2011. (ECF No. 5.) Then, on August 19, 2011, Plaintiff filed an application to proceed in

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<sup>1</sup> The Court takes judicial notice of the following cases: Hackett v. Taylor, 1:01-cv-06076-OWW-SMS (E.D. Cal.) (Dismissed 08/22/2002 for failure to state a claim); Hackett v. Taylor, 1:02-cv-05440-OWW-SMS (E.D. Cal.) (Dismissed 08/23/2002 for failure to state a claim); Hackett v. Schwarzenegger, 1:04-cv-05124-OWW-SMS (Dismissed 08/04/2005 for failure to state a claim); Hackett v. City of Fresno, 1:06-cv-01123-OWW-SMS (E.D. Cal.) (Dismissed 11/16/2006 for failure to state a claim). See also Hackett v. City of Fresno Fax Area Bus, 1:09-cv-00140-OWW-GSA (E.D. Cal.) (Dismissed 10/23/2009); Court determined that Plaintiff was not eligible to proceed in forma pauperis pursuant to Section 1915 because he was a three-striker).

1 forma pauperis on his appeal. (ECF No. 8.) This Motion is now before the Court.

2 28 U.S.C. § 1915 governs proceedings in forma pauperis. Section 1915(g) provides  
3 that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner  
4 has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought  
5 an action or appeal in a court of the United States that was dismissed on the grounds that  
6 it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless  
7 the prisoner is under imminent danger of serious physical injury.”

8 Because Plaintiff is subject to Section 1915(g) and does not meet the imminent  
9 danger exception, Plaintiff is not entitled to proceed in forma pauperis on appeal. Fed. R.  
10 App. P. 24(a)(4)(C).

11 Based on the foregoing, it is HEREBY ORDERED that:

- 12 1. Pursuant to 28 U.S.C. § 1915(g), Plaintiff is not entitled to proceed in forma  
13 pauperis on the appeal filed on August 11, 2011;
- 14 2. Pursuant to Federal Rule of Appellate Procedure 24(a)(4)(C), this Order  
15 serves as notice to the parties and the United States Court of Appeals for the  
16 Ninth Circuit of the finding that Plaintiff is not entitled to proceed in forma  
17 pauperis for this appeal; and
- 18 3. The Clerk of the Court shall serve a copy of this Order on Plaintiff and the  
19 United States Court of Appeals for the Ninth Circuit.

20  
21 IT IS SO ORDERED.

22 Dated: August 23, 2011

23 /s/ Lawrence J. O'Neill  
24 UNITED STATES DISTRICT JUDGE